CONSTITUTIONAL AND LEGISLATIVE LIMITATIONS OF THE HOME RULE CHARTER IN MINNESOTA.

I REGRET exceedingly that I am not able, in the scope of these observations, to include all the states of the American Union, where the home-rule charters have been permitted as a method of city government; but unfortunately my vision has not passed beyond the horizon of my own state, and the workings of the home-rule system in other states must be left as a subject for future study and comparison.

With pardonable pride, however, it may be said that the State of Minnesota, while she has erred with her sister commonwealths in experimental over-legislation, has nevertheless recently placed upon her statute books an act which is a real improvement in the laws of our land.[1]

Moreover, members of the American Bar Association, who recently honored her capitol city with their deliberations, may be interested in learning of the charter freedom in which many of the tiny cities, through which they passed, are living.

The sight of these many civic centers, each independent in a new way, each away from state control, is a scene far different from the old days of dependence upon state legislative will; and may well attract the attention of those who find deep pleasure in the contemplation of the happiness of a self-governed people.

In fact, I venture to predict that the bestowal of the right of local self-government upon small municipalities through the medium of the home-rule charter will result in the development of a spirit of intelligent freedom, not unlike that developed among the early Greeks in their love of a free city. No longer do we go humbly begging to the legislature for the bread of legal existence; for power and permission to do what of right and reason we should have been allowed always to have done in all matters of purely local interest.

No city, or village desiring to be organized as a city, in Minnesota is too small to have a charter home-made; drawn by fifteen of its own freeholders in charter commission assembled under appointment of the district judge, who proceeds either of his own will, when he deems it for the best interests of the inhabitants, or upon petition. The commission is given six months within which to draft and submit a charter: but the organization is perpetuated by successive four year tenures for the purpose of guarding and

[1] Constitutional Amendment, § 36, Art. IV; the statutes are found in §§ 746-758, Ch. 9 Revised Laws Minnesota, 1905.

amending the newly framed form of government. The charter is submitted to the people for adoption and a four-sevenths vote is necessary for ratification.

The deliberations of a charter commission are unique in the field of law-making bodies. No one can deny that principles fully as important as those settled in our own national and state constitutional conventions must here be debated and correctly determined, unless the charter is to be the subject of endless amendment in after days. It goes without saying that the best citizens of a community must unselfishly give of their time and ability; that the best legal talent must be employed; that state law must be carefully considered: and a comparison of charters of neighboring cities made, to the end that approved provisions may be selected and those of doubtful merit or supposed unconstitutionality avoided.

In a word, charter freedom is creative of governmental self-respect: and the home-rule charter becomes, to some extent at least, the constitution, if not, politically speaking, the creed, of a commonwealth.

I know of no better cure for the small dissensions which so often mar the civic life of a community, than the non-partisan and candid deliberations of a well chosen charter commission. Political temporalities disappear and mere selfish arguments have little weight; for all realize that selfishness, injected into a charter, becomes its poison at the polls.

Already the small municipalities are finding themselves better governed than before; the spirit of freedom, long confined, becomes a light in the community life: while other cities, less progressive, go lumbering on, under out-grown legislative grants. No municipality, though it be small in numbers, is deprived of the home-rule privilege: thinking men and understanding voters there must be; but, with these present, the benefit may be secured.

The student of this municipal movement is at once confronted by the question: how much independence does the home-rule constitutional amendment actually give and what, if any, are the limitations placed thereon?

Limitations, some apparent and some implied, are found in the Constitutional amendment which is the source of the home-rule power.

One limitation is definite and admits of no dispute: "No local charter * * shall supersede any general law of the state defining or punishing crimes or misdemeanors." Well and good. The strong arm of state law is needed in dealing with the criminal class and no city covets the task of re-enacting the criminal code.

Another limitation insures the republican form of government: "It shall be a feature of all such charters that there shall be provided [provision], among other things, for a mayor or chief magistrate, and a legislative body of one or two houses; if of two houses, at least one of them shall be elected by general vote of the electors." A slight change in language, but none in thought, marks the legislative act which carries the amendment into effect.

Passing upon this point the Supreme Court has said "That it * * is not a violation of the United States Constitution (Art. IV. Sec. 4.) providing that the United States shall guarantee to every state in this Union a republican form of government." "We apprehend," the Court continues, "that a little reflection must satisfy any one that the advantage of providing local self-government by the voters directly interested, through a 'referendum' is abstractly as well as concretely more republican than through representatives of the people in the legislature, many of whom are not at all interested in the affairs of the given locality."[2]

Turning now for the moment to the legislative provisions made pursuant to the Constitution, we find two further limitations, both of them definite, well-drawn and desirable.

All who admire JUDGE COOLEY'S firm stand in the *Salem Township case*[3] will be glad to find a safeguard against public extravagance in the limitation of bonded indebtedness: "No such charter shall permit the issue of any bonds of the city whereby its aggregate bonded indebtedness will be made to exceed ten per cent of the last assessed valuation of the property taxable therein: and no such charter of a city of the first class (over fifty thousand inhabitants—see infra—) shall permit the issue of its bonds, except to fund maturing bonds, when thereby its aggregate bonded indebtedness would be made to exceed five per cent of such assessed valuation, unless the charter provide that before such issue the approval of a majority of the electors voting upon the question at a general or special election be first obtained. But any such charter may provide that certificates of indebtedness or bonds issued before its adoption shall not be counted as part of such aggregate bonded indebtedness if (1) held in a sinking fund maintained by such city or village; or (2) issued for the purchase, construction, maintenance, extention, enlargement, or improvement of water and lighting plants, or either, owned and operated by such city or village, or the acquisition of property needed in connection therewith: or (3) for the creation or maintenance of a permanent improvement revolving fund; or

[2] Hopkins *v.* City of Duluth, 81 Minn. 189.

[3] 20 Mich. 452.

(4) for the purpose of anticipating the collection of general taxes for the year in which issued. And any such charter may provide that the city may issue certificates of indebtedness or bonds to any limit prescribed therein, without approval of the voters, if such issue be for either of the last two mentioned purposes, or for the purpose of extending, enlarging or improving water and lighting plants, or either, owned and operated by such city, or of acquiring property needed in connection therewith, or for the purpose of funding floating indebtedness incurred by the city or village before the adoption of the charter."

A second legislative provision seeks to guard the golden apples of franchise grants: "Such proposed charter may provide for regulating and controlling the exercise of privileges and franchises in or upon the streets and other public places of the city, whether granted by the city or village, by the legislature, or by any other authority; but no perpetual franchise shall ever be created, nor shall any exclusive franchise or privilege be granted, unless the proposed grant be first submitted to the voters of the city or village, and be approved by a majority of those voting thereon, nor in such case for a period of more than twenty-five years."

The legislature further provides that the new city shall be in all respects the legal successor of the former corporation and that no charter shall prejudice any subsisting right, lien or demand against the city or village superseded or affect any pending action or proceeding to enforce the same. Thus dishonorable repudiation of obligations is prevented.

So much for definite limitations. Now let us return to the Constitutional amendment and examine carefully the language by which the home-rule power is in one sentence wrought and in the next sentence curiously unwrought.

Possibly this is one of those cases where the opposition has finally yielded to the passage of a measure, when it has secured an amendment by which the powers given could be skillfully withdrawn. Whether purposely or unwittingly I know not; but the liberal power first given is curtailed by second thought.

"Any city or village in this state may frame a charter for its own government as a city *consistent with* and *subject to the laws of this state* * * *such charter* shall always be *in harmony with* and *subject to the constitution and laws of the state of Minnesota.*"

The legislature in its mandates under the constitutional amendment re-echoes: "The charter * * may provide for any scheme of municipal government *not inconsistent with the constitution.*"

"In harmony with"—"consistent with"—"subject to"—the constitution and laws of the state. No fault can be found with such limitations: they are normal and necessary: otherwise we should have every city exercising the doctrine of nullification to an extent undreamed of even by Calhoun.

And indeed the legislature has been extremely liberal in its grants under the amendment; for it has seen fit to place at the disposal of the cities the services of county officials and the dignity of the state district courts: "The charter may prescribe methods of procedure in respect to the operation of the government thereby created, and the duties thereunder of all courts and officers of the district and county in which the city is situated, which duties such courts and officers shall perform."

And, when ordered by the constitution to: "Prescribe by law the general limits within which such charter shall be framed," the legislature loosed the shackles of state control in this veritable proclamation of emancipation: "The charter * * may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, *as fully as the legislature might have done before the adoption of* Sec. 33, Art. 4, (the amendment under consideration) of the constitution."

To be sure this freedom is given by the law "Subject to the limitations in this chapter provided:" but the limitations are mere regulations of boundary lines or the financial or franchise safe-guards already mentioned.

And the Supreme Court, in its construction of the constitution and the law upon this question has concluded: "The power given by the constitution to cities to frame their own charters extends to and embraces any subject appropriate to the orderly conduct of municipal affairs."[4]

And: "The provisions of Const. Art. IV. Sec. 36, requiring the legislature to prescribe limits within which cities may frame their own charters, is sufficiently complied with when the legislature prescribes and imposes such general restrictions of the city's powers as are deemed by that body expedient and proper; and it is not necessary that the legislature prescribe a general framework for the city charter."[5]

But passing again to the constitution, we find ourselves confronted with this strong reservation: "The legislature may provide general laws relating to affairs of cities, the application of which

[4] State ex. rel. *v.* District Court of St. L. Co., 90 Minn. 457.
[5] State ex. rel. v. O'Connor, 81 Minn. 79.

may be limited to cities of over fifty thousand inhabitants, or to cities of fifty and not less than twenty thousand inhabitants, or to cities of twenty and not less than ten thousand inhabitants, or to cities of ten thousand inhabitants or less, which shall apply equally to all such cities of either class, and *which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for.*"

Fond hope. Like many a kind-hearted judge's decree, the opening dictum is all in our favor: the final decision alone is adverse.

The legislature has faithfully followed the suggestion of the constitution and: "Cities are hereby divided, for *legislative purposes,* into classes, etc.," reads its enactment, with an almost humorous warning to the governing bodies of cities to: "Prepare for the coming change."

Thus is the cord attached to the gift of home-rule government of cities, by which the boon may be withdrawn.

Fortunately the tendency to meddle with the internal affairs of municipalities having home-rule charters, is, in the state legislature at the present time, not strong: some law-making of this sort there has been; but little inconsistent with the charters; and most of it unobjectionable.

But the situation is exactly this: Minnesota cities have been given the *power* to form for themselves a plan of government suited to their different needs; and, upon local matters, may exercise the treasured right of self-government: *provided,* that the gentlemen in state session assembled do not counter-act.

In other words, the cities are fully equipped for home-rule charter government and may use their new equipment: *provided,* the legislature will allow them to do so.

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